IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

SUMMARY SUIT NO.5330 OF 1998

Associated Capsules Ltd. ...Plaintiff.
Versus
Rajat Enterprises. ...Defendant.

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Mr.Vikrant C. Deshpande for the Plaintiff.
None for the Defendant.

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CORAM : DR. D.Y. CHANDRACHUD, J.

March 26, 2007.

P.C.:

The suit under Order 37 Rule 1 of the Code of Civil Procedure, 1908, has been instituted for the recovery of a sum of Rs.15,53,194.60 together with interest on the principal sum of Rs.12,12,437.60 from the date of the suit till payment.

In pursuance of purchase orders dated 30th December 1996, 17th February 1997 and 27th March 1997 placed by the Defendant, the Plaintiff sold, supplied and delivered to the Defendant 100.07 lakh Empty Hard Gelatine Capsules and 45.50 lakh capsules respectively. The total value thereof was Rs.7,15,607.86 and Rs.3,43,474.24 respectively. Payment under invoices was to be made after the expiry of the credit period of 60

days and the invoices carry the requisite stipulation in respect of interest. No dispute was raised by the Defendant as regards the quantity, quality or price of the capsules sold, supplied and delivered.

In pursuance of purchase orders placed by the Defendant, the Plaintiff between 30th September 1997 and 28th October 1997 sold, supplied and delivered a total quantity of 2796.58 kg of PVC films of a total value of Rs.3,53,353.55 to the Defendant. A part payment of Rs.50,000/- is alleged to have been made by the Defendant on 22nd July 1997 and a further payment of Rs.1 lakh on or about 29th September 1997. The Plaintiff has averred that on 30th September 1997, a cheque in the amount of Rs.1 lakh was issued by the Defendant but was dishonoured on presentation. Subsequently, a further cheque dated 5th January 1998 in the amount of Rs.2 lakhs was dishonoured on presentation. A cheque dated 20th August 1997 which was issued for the liabilities of the PVC Division of the Plaintiff was also dishonoured. The suit was instituted in September 1998.

In the praecipe dated 5th March 2007 filed on behalf of the Plaintiff by its Advocate, it has been recorded that the Advocate who had entered appearance on behalf of the Defendant has withdrawn from the proceedings. On 11th September 2001, a Learned Single Judge while recording the aforesaid position, directed that the suit be kept in the ex-parte list of the year 1998. The suit has accordingly been now placed for hearing. The Plaintiff has filed an affidavit dated 26th February 2007 seeking the permission of the Court to lead secondary evidence. In the affidavit, it has been stated that the original papers and invoices relied upon by the Plaintiff were in the custody of the Company's Kandivli office and the PVC Division at Satara. A diligent search was taken but the originals were not found. Having regard to the contents of the affidavit in support, permission is granted to the Plaintiff to lead secondary evidence.

The Plaintiff has filed copies of the invoices together with a compilation of the relevant documents on which reliance has been placed in the plaint in support of the claim. The Defendant has not filed its Written Statement and there is no defence to the claim in the suit.

In these circumstances, having regard to the provisions of Order 37 of the Code of Civil Procedure, 1908, the suit shall have to be decreed and is accordingly decreed. The claim of the Plaintiff has been duly established on the basis of the evidence on record. There shall accordingly be a decree in terms of prayer clause (a) save and except a modification that the Plaintiff is entitled to interest at the rate of 9% per annum from the date of the suit until payment or realisation.

Refund of Court fee, if any, as per rules.

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